

BETWEEN

WILLMOTT GROWERS GROUP INC  
Appellant

10 and

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)  
(IN LIQUIDATION) IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED  
MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 2  
First Respondent

and

20 IN HIS CAPACITY AS LIQUIDATOR OF WILLMOTT FORESTS LIMITED (RECEIVERS AND  
MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 063 263 650)  
Second Respondent

and

30 IAN MENZIES CARSON  
IN HIS CAPACITY AS LIQUIDATOR OF WILLMOTT FORESTS LIMITED (RECEIVERS  
AND MANAGERS APPOINTED) (IN LIQUIDATION)  
Third Respondent

and

WILLMOTT ACTION GROUP INC  
Fourth Respondent



FIRST TO THIRD RESPONDENTS' SUBMISSIONS

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**PART I: CERTIFICATION FOR INTERNET PURPOSES**

1 The First to Third Respondents (**Respondents**) certify that these submissions are suitable for publication on the internet.

## PART II: STATEMENT OF ISSUES

- 2 On the preliminary question directed to be determined before trial (namely, 'are the liquidators able to disclaim the Growers' leases with the effect of extinguishing the Growers' leasehold estate or interest in the subject land') two issues arise:
- (a) Does s 568 of the *Corporations Act 2001* (Cth) empower the liquidator of an insolvent corporate landlord to disclaim a lease granted by the corporation?
  - (b) If the liquidator can disclaim the lease, does the disclaimer have the effect of extinguishing the lessee's leasehold estate in the subject land?

## PART III: SECTION 78B CERTIFICATION

- 10 3 The Respondents certify that they have considered whether any notice should be given in compliance with s 78B of the *Judiciary Act 1903* (Cth) and have concluded that no such notice is necessary.

## PART IV: CONTESTED FACTUAL MATTERS

- 4 The Respondents do not dispute the facts set out in Part V of the Appellant's submissions, but make the following further observations.
- 5 By Originating Process dated 13 December 2011, the Second and Third Respondents (**Liquidators**), the liquidators of the First Respondent (**Willmott**), sought a range of orders to enable the liquidators to dispose of certain assets, including the Bombala land.<sup>1</sup> Willmott had promoted and managed a number of investment schemes operating on the Bombala land and elsewhere. The leases the subject of this appeal (**Leases**) were granted over part of the Bombala land. The Leases are one of a series of agreements that regulated the operation of the schemes.<sup>2</sup> The Bombala land is the only significant unsecured asset of the First Respondent.<sup>3</sup> The Liquidators ran an extensive campaign to sell the Bombala land and other assets, offering the assets either 'encumbered' by the 'schemes' (whether registered or unregistered) or unencumbered.<sup>4</sup> All 179 parties who formally expressed interest in the sale process and signed confidentiality deeds indicated interest in buying some or all of the assets on an unencumbered basis. No parties (except under one proposal in respect of schemes which are irrelevant for present purposes) expressed interest in buying the assets on an encumbered basis.<sup>5</sup> As a consequence, one of the orders sought by the Liquidators was a direction that the Court consent to the Liquidators disclaiming certain 'Project Documents' of various Contractual and Partnership Schemes under s 568(1) of the *Corporations Act 2001* (Cth), including the Leases.<sup>6</sup>
- 6 The term of the relevant Leases is 25 years with a further term of five years.<sup>7</sup> For investment schemes established since 1990, the Leases are due to expire as follows (depending on whether the term is extended):

<sup>1</sup> As that term is defined in the Appellant's Submissions, [15].

<sup>2</sup> *In the matter of Willmott Forests Ltd (Receivers and Managers Appointed)(in Liquidation)* (2012) 91 ACSR 182; [2012] VSCA 202 (Warren CJ, Redlich JA and Sifris AJA) (**Reasons**) at [51]. A list of the relevant Project Documents is set out in Exhibit CDC-28 to the affidavit of Craig David Crosbie dated 18 January 2012.

<sup>3</sup> Affidavit of Craig David Crosbie dated 13 December 2011, [76]-[78].

<sup>4</sup> The sale process is described in the affidavit of Craig David Crosbie dated 13 December 2011, [76]-[120].

<sup>5</sup> Affidavit of Craig David Crosbie dated 13 December 2011, [90].

<sup>6</sup> Originating Process dated 13 December 2011, paragraph 4.

<sup>7</sup> Two 'exemplar' leases are included at exhibits CDC-18 and CDC-20 to the affidavit of Craig David Crosbie dated 8 March 2012.

| Year scheme began | Date of Expiry of lease |
|-------------------|-------------------------|
| 1990              | 2015-2020               |
| 1991              | 2016-2021               |
| 1993              | 2018-2023               |
| 1994 <sup>8</sup> | 2019-2024               |
| 1995              | 2020-2025               |
| 1998              | 2023-2028               |

7 Under some Leases, rent was payable (and paid) in advance;<sup>9</sup> under other Leases, rent is payable periodically.<sup>10</sup> Otherwise, the terms and covenants in the Leases are substantially in common form.

#### PART V: LEGISLATION

8 The Appellant's statement of applicable statutes is accepted.

#### PART VI: ARGUMENT

9 The question is whether a liquidator can disclaim property of the company within the meaning of s 568(1) with the (indirect) effect that a lessee's proprietary rights are extinguished. To answer this question requires first that the property the subject of the disclaimer (**disclaimer property**) be identified. The effect of disclaiming that property is then determined under s 568D. In that regard, the Appellant challenges both the manner in which the Court of Appeal (i) identified the disclaimer property in this case, and (ii) assessed the effect of the disclaimer of that property (so defined) on the lessee's proprietary rights.

10 It is convenient to address these issues by:

- (a) explaining the nature of the problem addressed by the disclaimer provisions in Division 7A of Part 5.6 the Act;
- (b) identifying the category of disclaimer property for which the Respondents contend; and
- (c) assessing whether the disclaimer of the property (so defined) would have the effect of extinguishing the lessee's leasehold.

#### The bankruptcy problem

11 At the time of bankruptcy/insolvency, the insolvent person often has burdensome or income-draining property which hinders the administration of the estate or consumes assets otherwise available for creditors. Property could be burdensome for a variety of reasons, such as costs of maintenance, continuing liabilities, the negative effect of outstanding encumbrances on the property's value, or where the property is not able to be sold for a price that exceeds the cost of sale and administration.

12 Prior to the enactment of the *Bankruptcy Act 1869* (UK), there was no statutory provision authorising the trustee/liquidator to disclaim burdensome property. The bankrupt remained liable to perform his contracts, notwithstanding bankruptcy. So

<sup>8</sup> Four schemes were established in 1994. The leases under the various schemes have the same expiry dates.

<sup>9</sup> For example, the 'exemplar' lease referred to in the Appellant's Submissions at [17]: see exhibit CDC-20 to the affidavit of Craig David Crosbie dated 8 March 2012.

<sup>10</sup> For example, the exemplar lease at exhibit CDC-18 to the affidavit of Craig David Crosbie dated 8 March 2012.

the courts developed the rule that the trustee could either adopt and perform contracts if thought to be beneficial, or abandon them if they were burdensome. The leading case was *Copeland v Stephens*.<sup>11</sup> The procedure is explained in *Re Sneezum; Ex parte Davis*<sup>12</sup> and *Wilson v Wallani*.<sup>13</sup>

13 The position changed with the introduction of the *Bankruptcy Act 1869* (UK). First, following bankruptcy the bankrupt was no longer liable on his contracts.<sup>14</sup> Secondly, the trustee could not choose between adopting or abandoning the bankrupt's property, it vested in the trustee on his appointment and he became liable to perform all covenants.<sup>15</sup> Thirdly, in the case of burdensome property (that is property  
10 burdened with obligations of an onerous character),<sup>16</sup> the trustee was given a right of disclaimer.<sup>17</sup> The disclaimer power was to be exercised to advance the prompt, orderly and beneficial administration of the bankrupt's insolvent estate.<sup>18</sup> The property that could be disclaimed was property that consisted of:<sup>19</sup>

land of any tenure burdened with onerous covenants, of unmarketable shares in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money.

14 In the United Kingdom the description of disclaimable property remained substantially unchanged until the *Insolvency Act 1986* (UK). By s 178(3) of that Act the onerous  
20 property that can be disclaimed is '(a) any unprofitable contract, and (b) any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.' It is not suggested that the change in language had any substantive effect for present purposes.

15 In Australia, the disclaimer provisions in the applicable bankruptcy and company statutes by and large followed the early UK Bankruptcy legislation. However, as a result of reforms enacted in the *Corporate Law Reform Act 1992* (Cth), the current disclaimer provisions relevantly depart from the UK position and the position that prevailed in Australia prior to 1992<sup>20</sup> in three significant ways. First, a 'lease of land' is  
30 expressly treated as 'a contract': s 568(1A). Secondly, the Court is empowered to set aside a disclaimer, but only when satisfied that the disclaimer would cause, to persons who have, or claim to have, interests in the property, prejudice that is grossly out of proportion to the prejudice that setting aside the disclaimer would cause the company's creditors: ss 568B(3); 568E(5). Thirdly, the category of contracts which a liquidator can disclaim was expanded from 'unprofitable contracts' to 'contracts': s 568(1)(f).

<sup>11</sup> (1818) 1 B & A 593.

<sup>12</sup> (1876) 3 Ch D 63.

<sup>13</sup> (1880) 5 Ex D 155.

<sup>14</sup> *Bankruptcy Act 1869* (UK) s 31.

<sup>15</sup> *Bankruptcy Act 1869* (UK) s 17. See also *In re Solomon; Ex parte Dressler* (1878) 9 Ch D 252.

<sup>16</sup> As to which, see *In re Mercer and Moore* (1880) 14 Ch D 287.

<sup>17</sup> *Bankruptcy Act 1869* (UK) s 23.

<sup>18</sup> *In re Clarke; Ex parte East and West India Dock Co* (1881) 17 Ch D 759, 764 (Lord Selborne L.C.).

<sup>19</sup> *Bankruptcy Act 1869* (UK) s 23.

<sup>20</sup> Some of the changes (or similar changes) had been introduced into the *Bankruptcy Act 1966* (Cth) through the *Bankruptcy Amendment Act 1980* (Cth).

- 16 The reason for the latter change appears in the Explanatory Memorandum to the Bankruptcy Amendment Bill 1979 (Cth). There it is said:<sup>21</sup>

The type of property which may be disclaimed is redefined so that it includes contracts, the profitability of which may be in doubt because the property is unsaleable or not readily saleable, even if those contracts are not actually unprofitable at the time of the disclaimer... This will assist the Trustee (subject to the control of the Court) in dealing with contracts which involve difficulties and risks that would render their completion inadvisable.

- 10 17 The consequence of expanding the class of contracts which can be disclaimed may be significant. In brief, unprofitable contracts are those which impose on the company continuing obligations which are inconsistent with the timely administration of the liquidation.<sup>22</sup> Excluded from the ambit of unprofitable contracts are contracts that are merely financially disadvantageous.<sup>23</sup> Now, however, contracts other than unprofitable contracts may be disclaimed, albeit with the leave of the Court. Obviously, a liquidator would not likely seek leave to disclaim a profitable contract. That would ordinarily be inconsistent with his duty to realise for the best possible price the assets of the corporation for distribution between creditors. On the other hand, a liquidator can seek leave to disclaim a contract whose profitability is doubtful. In addition, there seems to be no reason why a liquidator could not also seek leave to disclaim a contract which is financially disadvantageous. In the latter event, the Court would need to weigh the benefit to creditors against the harm to the counterparty. If little harm would be caused to the counterparty, the Court ought to grant the application.
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#### What is the disclaimer property?

- 18 Generally, a lease is created by contract. The holder of an estate in land (the lessor) must agree to confer on another (the lessee) a right to the exclusive possession of the land, for an ascertainable period, enforceable against all others including the landlord.<sup>24</sup>
- 30 19 Where a lease is created by contract, it is submitted that there are (relevantly) two items of property which might, depending on the circumstances, be disclaimed by a liquidator of a corporate lessor. One is the company's reversionary interest; the other is the lease contract itself. The former potentially constitutes 'land burdened with onerous covenants' under s 568(1)(a); the latter, 'a contract' under s 568(1)(f). A liquidator does not need leave to disclaim burdened land under s 568(1)(a). But, by s 568(1A), a liquidator does need leave to disclaim a contract, other than an 'unprofitable contract' or a 'lease of land'.
- 20 20 Turning first to the reversionary interest, the Respondents accept that, dependent upon the precise rights and obligations created, a lease might burden land with onerous covenants. So also might a mortgage or charge. It is also accepted that the burdened land which may be disclaimed under s 568(1)(a) includes any interest in land.
- 40 21 On the grant of a lease the grantor retains the reversionary interest in the leased land, being that part of the grantor's interest in the land that is not disposed of by the grant. In the case of a lease of freehold, the former estate in fee simple in

<sup>21</sup> Explanatory Memorandum, Bankruptcy Amendment Bill 1979 (Cth) 149(a).

<sup>22</sup> *Dekala Pty Ltd (in liq) v Perth Land & Leisure Ltd* (1987) 17 NSWLR 664, 667G (Young J); *Global Television Pty Ltd v Sportsvision Australia Pty Ltd (in liq)* (2000) 35 ACSR 484, 497 [62] (Santow J); *Old Style Confections Pty Ltd v Microbyte Investments Pty Ltd (in liq)* [1995] 2 VR 457, 466 (Hayne J).

<sup>23</sup> *Re Real Investments Pty Ltd* (2000) 2 Qd R 555, [21] (Chesterman J).

<sup>24</sup> *Radaich v Smith* (1959) 101 CLR 209; *Chelsea Investments Pty Ltd v Federal Commissioner of Taxation* (1966) 115 CLR 1.

possession has become the fee simple in reversion. The reversionary interest is a vested interest. Technically it is an estate in possession not a future interest.<sup>25</sup> Commonly this is referred to as the reversion.<sup>26</sup>

- 22 If the liquidator chooses to disclaim the reversion the land escheats to the Crown.<sup>27</sup> The better (but not only) view is that under the common law in the case of escheat to the Crown, subsisting proprietary interests over the land remain.<sup>28</sup> The same is true if land is disclaimed under s 568.<sup>29</sup>
- 23 Though the reversion passes automatically to the Crown subject to existing interests, the Crown will not be liable to perform the covenants in the lease.<sup>30</sup> Indeed, in the case of money obligations, parliamentary sanction is required.
- 24 Turning then to the lease contract itself, it is submitted that the lease is 'a contract' within the meaning of s 568(1)(f). Section 568(1)(f) treats a contract *in toto* as property of the company capable of being disclaimed. The reference is not, as the Appellant's argument seems to suggest, to merely the company's rights under a contract. This is evident in various ways.
- 25 First, the effect of the disclaimer is to terminate 'the company's rights, interests, liabilities and property in or in respect of the disclaimed property': s 568D(1). If property in a contract was confined to the company's rights and powers it would be difficult to give this provision effect, at least without straining the language.
- 26 Secondly, in the case of contracts particularly, but in any event more generally, the liquidator cannot disclaim part only of the disclaimed property.<sup>31</sup> The nature of the property to be disclaimed must be identified and all rights and liabilities in respect of it are gone.
- 27 Thirdly, various disclaimer provisions refer to a contract *in toto*, such as a liquidator being taken to have 'adopted' a contract upon failure to disclaim the contract in certain circumstances;<sup>32</sup> a person, as against the company, being 'entitled to the benefit or subject to the burden of a contract made with the company';<sup>33</sup> and the Court 'discharging' or 'rescinding' the contract.<sup>34</sup>
- 28 Fourthly, there is the reference to an 'unprofitable contract' in s 568(1A), which focuses on the continuing *obligations* imposed on the company in liquidation under a contract, and whether those obligations are inimical to the timely completion of the liquidation.
- 29 Hence, the Court of Appeal correctly proceeded on the basis that the reference to a 'contract' in s 568(1)(f) is to a contract *in toto*.<sup>35</sup> The Liquidators seek to disclaim the Leases as 'contracts' pursuant to s 568(1)(f). They do not seek to disclaim Willmott's reversion in the leased land.

<sup>25</sup> *Wakefield and Bamsley Union Bank v Yates* (1916) 1 Ch D 452, 460 (Warrington L.J.).

<sup>26</sup> *Eg Attorney General (Ontario) v Mercer* (1883) 8 App Cas 767, 772 (Lord Selborne L.C.).

<sup>27</sup> *In re Mercer and Moore* (1880) 14 Ch D 287, 295-6 (Jessel MR); *Scmla Properties Ltd v Gesso Properties (BVI) Ltd* [1995] BCC 793, 799 (Stanley Burton QC); *Rams Mortgage Corporation Ltd v Skipworth (No 2)* (2007) 239 ALR 799, 801 [8] (Heenan J).

<sup>28</sup> The relevant cases and writings are collected in *Scmla Properties Ltd v Gesso Properties (BVI) Ltd* [1995] BCC 793, 799-801.

<sup>29</sup> *Sandhurst Trustees Ltd v 72 Seventh Street Nominees Pty Ltd (in liq)* (1998) 45 NSWLR 556, 564 (Bryson J); *Rams Mortgage Corporation Ltd v Skipworth (No 2)* (2007) 239 ALR 799, 802 [10]-[11] (Heenan J).

<sup>30</sup> *Re Tulloch Ltd (No 2)* (1978) 3 ACLR 808, 813 (Needham J).

<sup>31</sup> *Ex parte Glegg* (1881) 19 Ch. D. 7, 16 (Jessel M.R.), 17 (Lush L.J.).

<sup>32</sup> Section 568(8).

<sup>33</sup> Section 568(9).

<sup>34</sup> Section 568(9).

<sup>35</sup> Reasons, [2] (Warren CJ and Sifris AJA); [64] (Redlich JA).

### The effect of the disclaimer

30 The effect is stated in s 568D. It involves three steps of enquiry:

- (a) What are the company's rights, interests, liabilities and property in or in respect of the disclaimed property?
- (b) Is it necessary to affect any rights or liabilities of any other person in order to release the company from liabilities in respect of the disclaimer property?
- (c) If there are rights or liabilities which are necessarily affected, how are they affected?

10 31 The Respondents contend that the effect of disclaiming the Leases would necessarily terminate the lessee's (non-accrued) rights under the Leases and the lessee's leasehold estate.

#### *The first step*

32 Section 568D(1) provides that on disclaimer, the company's 'rights' and 'liabilities' in respect of the disclaimed property are taken to be terminated.

33 Willmott's rights under the Leases include a right to receive periodic rent (where applicable), rights granted under property legislation,<sup>36</sup> rights in respect of breaches by the lessee<sup>37</sup> and the benefit of various covenants, such as covenants in respect of compliance with statutes<sup>38</sup> and the use of land.<sup>39</sup> Willmott's obligations under the Leases include its obligation to provide quiet enjoyment and to not derogate from the grant.

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34 If the Liquidators were to disclaim the Leases, Willmott's rights, powers and liabilities in respect of the Leases would be taken to be terminated. As the Court of Appeal noted,<sup>40</sup> the compendious expression 'liabilities' include Willmott's obligations under the Leases. This is consistent with the reasoning of the House of Lords in *Hindcastle v Barbara Attenborough Associates*.<sup>41</sup> A broad definition of liability is consistent with the statutory purpose of the disclaimer provisions.<sup>42</sup> The Appellant conceded in the Court of Appeal that the obligation to provide quiet enjoyment is a liability.<sup>43</sup>

30 35 The rights and liabilities of Willmott under the Leases, arising as they do from the Leases (ie the disclaimer property) are 'in respect of' that property.

36 As the Court of Appeal recognised,<sup>44</sup> the qualification to the foregoing is that disclaimer does not operate to terminate liabilities which have accrued and been performed prior to the disclaimer. On the other hand, for s 568(1)(f) to have practical effect, liabilities in the form of promises, the time for performance of which has not yet

<sup>36</sup> See, eg, Contractual Scheme exemplar lease, Special Condition B3(d).

<sup>37</sup> See, eg, Contractual Scheme exemplar lease, Special Condition B3(a).

<sup>38</sup> See, eg, Contractual Scheme exemplar lease, Special Condition B1(d).

<sup>39</sup> See, eg, Contractual Scheme exemplar lease, Special Condition B1(g).

<sup>40</sup> Reasons [28], [33]-[37] (Warren CJ and Sifris AJA); [78], [82] (Redlich JA).

<sup>41</sup> [1997] AC 70, 85E (Lords Nicholls). See also *Rothwells Ltd v Spedley Securities Ltd* (1990) 20 NSWLR 417, 422E (Hodgson J).

<sup>42</sup> Reasons [35]-[37] (Warren CJ and Sifris AJA), citing *Crimmins v Stevedoring Committee* (1999) 200 CLR 1, 52 [137]-[139] (Hayne J).

<sup>43</sup> Reasons [78] (Redlich JA).

<sup>44</sup> Reasons [31] (Warren CJ and Sifris AJA); [82] (Redlich JA).

arisen, or promises which are dependent on the occurrence of a condition which has not yet occurred, are liabilities that would be terminated.<sup>45</sup>

37 The same is true for continuing obligations. A disclaimer will terminate the continuance of that liability. Relevantly, the lessor's liabilities to provide quiet enjoyment and not to derogate from the grant are continuing obligations which bind the lessor throughout the term of the lease.<sup>46</sup> The Court of Appeal correctly held that those liabilities, in so far as they remain to be performed, must be terminated by reason of a disclaimer.<sup>47</sup>

*The second and third steps*

10 38 It is submitted that it is necessary to affect the lessee's proprietary rights under the Leases in order to release the company from its liabilities. In any event, it is submitted that the consequence of the termination of the lessor's rights and liabilities following disclaimer is that the leasehold interest must fall away.

39 A related question was considered by the House of Lords in *Hindcastle*.<sup>48</sup> The question in issue in that case was whether on disclaimer of the lease, all interests and obligations also fell away, as had been held (in respect of guarantors) in *Stacey v Hill*.<sup>49</sup> The other view was that the original tenant remained liable for rent notwithstanding the disclaimer of the lease by an assignee, as had been decided in *Hill v East and West India Dock Co*.<sup>50</sup>

20 40 Lord Nicholls gave the leading judgment. His Lordship explained that the purpose of disclaimer is to facilitate the winding up of the insolvent's affairs.<sup>51</sup> This is achieved by freeing the company from all liabilities in respect of the disclaimed property. Equally, as a matter of fairness the company loses its rights in respect of the property.<sup>52</sup>

41 In the case of a simple bilateral lease arrangement, Lord Nicholls said the respective rights and liabilities of the landlord and tenant are terminated, it being necessary to extinguish the landlord's rights in order to relieve the tenant of liability. The tenant's leasehold interest is also determined, thereby accelerating the reversion expectant.<sup>53</sup>

30 42 In relation to third parties, Lord Nicholls said that their rights and liabilities are preserved, except where necessary to terminate in order to relieve the insolvent company from liability (for example, in respect of its liability to indemnify an assignor or guarantor).<sup>54</sup> Where necessary, the disclaimer provisions operate so as to deem such rights and liabilities to continue to exist, or to 'recreate' the determined lease for vesting purposes.<sup>55</sup> The decision in *Stacey* was overturned.<sup>56</sup>

<sup>45</sup> *Rothwells Ltd v Spedley Securities Ltd* (1990) 20 NSWLR 417, 422C-D (Hodgson J).

<sup>46</sup> Adrian J Bradbrook, Clyde Croft and Robert S Hay, *Commercial Tenancy Law* (Butterworths, 3<sup>rd</sup> ed, 2009) 232 [8.4].

<sup>47</sup> Reasons [32] (Warren CJ and Sifris AJA); [80] (Redlich JA). The reasons of Warren CJ and Sifris AJA refer only to the obligation to provide quiet enjoyment.

<sup>48</sup> *Hindcastle v Barbara Attenborough Associates* [1997] AC 70, 87E (Lord Nicholls).

<sup>49</sup> [1901] 1 KB 660.

<sup>50</sup> 9 App Cas 448.

<sup>51</sup> [1997] AC 70, 86H.

<sup>52</sup> *Ibid* 87B.

<sup>53</sup> *Ibid* 87E-F; see also the judgment of Lord Lloyd, 81E.

<sup>54</sup> *Ibid* 87-89; see also the judgment of Lord Lloyd, 81E-83A.

<sup>55</sup> *Ibid* 88G-89A.

<sup>56</sup> *Ibid* 92-94.



- 43 A number of observations can be made about *Hindcastle*:
- (a) The property the subject of the disclaimer was treated as the lease contract. The tenant's leasehold estate was a separate interest in respect of the lease.<sup>57</sup>
  - (b) The Court's reasoning about the necessity of terminating a counter-party's rights as the 'reverse side' of a company's liabilities is equally applicable to a scenario where the company is the lessor (as Lord Nicholls expressly noted);
  - (c) The reason a disclaimer terminates the leasehold estate is that a tenant cannot retain the leasehold estate while being relieved of all of its obligations under the lease contract. This demonstrates, at a minimum, that a leasehold interest is a right 'in or in respect of' a lease.<sup>58</sup>
- 10
- 44 In the converse position, the disclaimer releases the lessor from all of its unperformed obligations under the lease as well as preventing it from exercising any of its rights. The question is whether a leasehold estate can survive if the parties have no further rights and obligations under the lease contract; where, for example, the lessor is no longer obliged to provide quiet enjoyment and the lessee is no longer required to pay rent due under the lease.
- 45 The Appellant's answer to this is that the lessee's leasehold estate is an accrued right which cannot be affected by the disclaimer. The basis for this contention is that the leasehold estate was created upon the grant of the term (ie when the lease was entered into) and, being executed, is not affected by a statutory disclaimer which comes into effect later and then only on the basis that the disclaimer will only affect prospective rights and obligations.
- 20
- 46 The Respondents accept, as Deane J observed in *Progressive Mailing House v Tabali*,<sup>59</sup> that a lease is both an executory contract and an executed demise. It does not follow, however, that the demise will survive a disclaimer. Many proprietary interests (including interests in land) may be absolute in the sense that once granted, then (statute apart) the holder's interest cannot be defeated. A freehold interest is an example. Another example is a beneficial interest in a fixed (ie non-discretionary) trust provided the trust instrument does not contain a power of revocation.
- 30
- 47 A lease, on the other hand, is not an absolute interest. It is an interest which is capable of being determined. A lease will be determined by, for example, the expiry of the term, the occurrence of an event upon which the term is made conditional, merger, forfeiture and re-entry pursuant to a proviso in the lease, and so on.<sup>60</sup>
- 48 A leasehold estate can be determined if the lessee's conduct constitutes repudiation. The general rule regarding the determination of contracts, as stated by Dixon J in *McDonald v Dennys Lascelles Ltd*,<sup>61</sup> is that when a contract, which is not void or voidable at law, or liable to be set aside in equity, is dissolved at the election of one party because the other has not observed an essential condition or has committed a breach going to its root, the contract is determined so far as it is executory only and
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<sup>57</sup> Ibid 85G. Lord Lloyd refers to a disclaimer as having a 'dual effect', both on contractual rights and liabilities under the lease and also on the leasehold interest: 81E.

<sup>58</sup> The wording of the relevant provision of s 178(4) of the the *Insolvency Act 1986* (UK) is relevantly identical to s 568D(1) of the Corporations Act.

<sup>59</sup> (1985) 157 CLR 17, 51.

<sup>60</sup> Peter Butt, *Land Law* (Thomson Reuters, 6<sup>th</sup> ed, 2010) [15236].

<sup>61</sup> (1933) 48 CLR 457, 477.

the party in default is liable for damages for its breach. In *Tabali*, Deane J applied that rule to leases. His Honour said:<sup>62</sup>

[O]nce it is accepted that the principles of the law of contract governing termination for fundamental breach are, as a matter of theory, applicable to leases generally, there is no difficulty in applying them in the present case in much the same fashion as to an ordinary executory contract: "[i]f the contract is avoided or dissolved... the estate in land falls with it". [footnotes omitted]

- 10 49 If the Appellant's contention is to be accepted in full, if a lease is brought to an end on the repudiation of the tenant, the tenant would nevertheless be entitled to retain the leasehold estate acquired on grant. The cases, however, reject this proposition. It is inconsistent with the judgment of Deane J in *Tabali*. Similar arguments have been rejected in various recent decisions of the Courts of Appeal of Victoria and New South Wales.<sup>63</sup> The Court of Appeal in the instant case correctly rejected such arguments.<sup>64</sup>
- 50 The probable explanation is that the continued holding of the leasehold estate by the tenant is contingent on the performance by him of his obligations under the lease. If by reason of his repudiation the lease is brought to an end, so also must the leasehold estate.
- 20 51 The same reasoning applies in the case of a disclaimer: a leasehold estate cannot exist following termination of the rights and liabilities which govern its existence. In particular, the leasehold estate cannot survive where the lessee is no longer bound to perform any obligations or covenants (including, ordinarily, to pay rent).
- 52 It is equally the case that the lease cannot survive where the lessor is no longer bound by its obligations under the lease, including its obligations to provide quiet enjoyment and not to derogate from the grant. The importance of the covenants of quiet enjoyment and non-derogation are evident, they being terms implied as a matter of law (subject to express terms to the contrary) to give efficacy to a lease contract.<sup>65</sup>
- 30 53 It is no answer to say that the law recognises privity of estate as well as privity of contract.<sup>66</sup> The true question is to determine the consequence on the continued subsistence of the estate by the termination of rights and obligations (including those which touch and concern the land) in respect of the lease. If the rights and obligations which touch and concern the land are discharged, there is nothing to support the estate.

<sup>62</sup> (1985) 157 CLR 17, 54. See also Adrian J Bradbrook, Clyde Croft and Robert S Hay, *Commercial Tenancy Law* (Butterworths, 3<sup>rd</sup> ed, 2009) 520 [16.27], where it is suggested that, 'the mere fact that a lease passes an estate in the land is no reason for refusing to hold that the effect of the acceptance of a repudiation is to re-vest the estate in the lessor.'

<sup>63</sup> *Apriaden Pty Ltd v Seacrest Pty Ltd* (2005) 12 VR 319, 322 [4] (Ormiston JA), 334-5 [61]-[65] (Williams AJA); *Natwest Markets Australia Pty Ltd v Tenth Vandy Pty Ltd* (2008) 21 VR 68, 79-82 [47]-[56] (Neave JA); *World Best Holdings Ltd v Sarker* (2010) 14 BPR 27,549, [33] (Handley AJA; Tobias and Campbell JJA concurring).

<sup>64</sup> Reasons [41]-[52] (Warren CJ and Sifris AJA); [66]-[72] (Redlich JA).

<sup>65</sup> *O'Keefe v Williams* (1910) 11 CLR 171, 192-3 (Griffith CJ), 197-8, 200-201 (Barton J), 211 (Isaacs J); see also *Kenny v Preen* [1963] 1 QB 499, 511-2 (Pearson L.J.); cf *Goldsworthy Mining Ltd v FCT* (1972) 128 CLR 199, 214-5 (Mason J).

<sup>66</sup> Cf Appellant's Submissions at [41(c)]-[41(d)].

## The Appellant's characterisation of the disclaimer property

54 In broad outline, the Appellant's case is that:

- (a) a lease contract is a 'contract' within the meaning of s 568(1)(f) and a 'lease of land' within the meaning of s 568(1A) where the company in liquidation is a lessee;
- (b) a lease contract is neither a 'contract' within the meaning of s 568(1)(f) nor a 'lease of land' within the meaning of s 568(1A) where the company in liquidation is a lessor; and
- (c) where the company in liquidation is a lessor, the only property in respect of a lease which can be disclaimed is the company's reversion.

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55 The Appellant accepts, as it must, that 'a contract' in s 568(1)(f) includes a 'lease of land', no doubt because of the language of s 568(1A).<sup>67</sup> The Appellant, however, submits:<sup>68</sup>

But that begs the question of whether "a contract" includes a reversion. In other words, as a matter of statutory interpretation, if a reversion answers the description of "land burdened with onerous covenants", can the lease in respect of which the reversion exists as property of the company answer the description of "a contract"?

56 This is a confusing sentence. The Respondents do not contend, and have not in the past suggested, that a reversion is a contract.

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57 As explained, once a lease contract is made, the landlord has both rights and powers under the lease contract and the reversion. It is the Respondents' contention that, subject to the Court's power under ss 568B and 568E to set aside a disclaimer, the liquidator can choose which of the two items of property he wishes to disclaim.

58 Problems arise in accepting the Appellant's construction. They begin with the statutory language itself.<sup>69</sup> The language employed is particularly significant in the insolvency context, given that insolvency law is statutory and primacy must be given to the relevant statutory text.<sup>70</sup>

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59 Here, the meaning of the statutory language is clear. There is nothing in the language which limits the operation of the disclaimer to an insolvent corporate tenant. On the ordinary meaning of the words employed, the liquidator of an insolvent landlord is just as able to disclaim the lease contract as the liquidator of an insolvent tenant. Conceptually, a contract is a contract, regardless of the party from whose perspective the contract is being viewed.

60 The Appellant's construction should also be rejected because of the consequences that would follow if, as the Appellant contends, the only way to rid an insolvent lessor of liabilities under a lease contract is to disclaim the reversion.

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61 Section 568D limits the effect of a disclaimer to the company's rights and liabilities 'in or in respect of' the disclaimer property. Not all – and dependent upon the lease, potentially not many – of the landlord's liabilities under a lease contract are in respect of the reversion.

<sup>67</sup> Appellant's submissions [28].

<sup>68</sup> *Ibid.*

<sup>69</sup> *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27, 46 [47] (Hayne, Heydon, Crennan and Kiefel JJ).

<sup>70</sup> *International Air Transport Association v Ansett Australia Holdings Ltd* (2008) 234 CLR 151, 182 [78] (Gummow, Hayne, Heydon, Crennan and Kiefel JJ).

- 62 For example, the Appellant itself contends that the covenant to provide quiet enjoyment is not a liability "in or in respect of" the reversion.<sup>71</sup>
- 63 Another common example is a lease contract which imposes on the landlord onerous building obligations. Although first instance authorities are in a state of conflict, the better view is that such obligations are not 'in or in respect of' the reversion, and therefore would remain with the insolvent landlord.<sup>72</sup> Hence, the liquidator could only get rid of those obligations by disclaimer of the lease contract.
- 64 A further example is where the insolvent landlord had previously assigned the reversion, but remains liable on the covenants. In that event, there would be no reversion to disclaim and all that would be left for the liquidator is to disclaim the lease contract.
- 65 A further reason for accepting the Respondents' interpretation is that it is supported by authority. Some, though admittedly few, cases have held, or at least found it clearly arguable, that a liquidator of an insolvent landlord may disclaim a lease. In *Re Jandowae Estates*,<sup>73</sup> Master McLaughlin held that under equivalent provisions of the *Companies (Queensland) Code*, a liquidator of a lessor could disclaim a lease as an unprofitable contract. Similarly, in *Re Richmond Commercial Developments*,<sup>74</sup> a question arose as to whether a statutory manager of a lessor could disclaim a lease under s 312 of the *Companies Act 1955* (NZ). Wallace J reached the preliminary view that a lease under which the company is lessor might constitute an 'unprofitable contract' for the purposes of disclaimer.<sup>75</sup> In *Re Real Investments Pty Ltd*,<sup>76</sup> a liquidator of a lessee sought to disclaim a lease. In the course of his reasons, Chesterman J observed that while a lease of land might ordinarily be thought of as 'land burdened with onerous covenants' under s 568(1)(a), 'the draftsmen seemed to have regarded leases as a species of contract, not an interest in land'. However, a lease does not create an estate of land in the lessor capable of constituting 'land' under s 568(1)(a). In that sense, the logic for characterising a lease as a contract is even stronger where the company is lessor.
- 66 The last point on this is made on the assumption that, contrary to the Respondents' case, a 'lease of land' in s 568(1A) means something like 'tenant's lease of land'. The only consequence is a lease by a landlord to a tenant, being 'a contract', falls within s 568(1)(f), and a liquidator would require leave to disclaim it.
- 67 The Appellant also argues that the plain meaning of 'lease of land' is inconsistent with the purpose of the disclaimer provisions. In assessing this argument, it must be borne in mind that the purpose of a statute resides in its text and structure.<sup>77</sup> The process 'neither permits nor requires some search for what those who promoted or passed the legislation may have had in mind when it was enacted.'<sup>78</sup>
- 68 The statutory purposes have been identified. The assumption behind them is at least to avoid existing assets being diminished, and to expedite the administration. A construction of the disclaimer provisions which requires the liquidator to abandon valuable property where another option is available is not to be preferred.

<sup>71</sup> Appellant's Submissions [45].

<sup>72</sup> *Scmla Properties Ltd v Gesso Properties (BVI) Ltd* [1995] BCC 793, 809 (Stanley Burton QC); *Burns Philp Trustee Co Ltd v Ironside Investments Pty Ltd* [1984] 2 Qd R 16, 31 (Shepherdson J); cf *Re Middle Harbour Investments Co* [1977] 2 NSWLR 652, 658G-660A, 661A (Bowen CJ).

<sup>73</sup> (1989) 7 ACLC 179, 181.

<sup>74</sup> (1990) 5 NZCLC 66,336.

<sup>75</sup> *Ibid* 66,341. See also *Capital + Merchant Investments Ltd v Russell Management Ltd* [2008] NZHC 2125, [30] (Asher J).

<sup>76</sup> (2000) 2 Qd R 555, [13].

<sup>77</sup> *Certain Lloyd's Underwriters Subscribing to Contract No IH00AAQS v Cross; Certain Lloyd's Underwriters Subscribing to Contract No IH00AAQS v Thelander* (2012) 293 ALR 412, 418 [25] (French CJ and Hayne J).

<sup>78</sup> *Ibid*.

- 69 The Appellant asserts that the property in the lease, in the sense required by the statute, vests within the tenant and does not vest in the landlord company.<sup>79</sup> That argument ignores s 568(1)(f), which treats a contract as property. It is not a matter of having property 'in' the contract; the contract itself is the property.
- 70 The Appellant also argues that its approach achieves the purpose of the disclaimer power, namely to terminate a company's prospective liabilities.<sup>80</sup> The Respondents' interpretation better achieves that purpose. The Respondents have explained that if the liquidator of a lessor can only disclaim the reversion, the company may remain subject to liabilities under the lease.
- 10 71 It is accepted that a legislative intention to interfere with proprietary rights should not be lightly inferred.<sup>81</sup> In the case of the disclaimer provisions, however, Parliament has specified the extent to which proprietary rights of both parties are to be terminated. That is in the context of a comprehensive regime designed to balance the interests of facilitating the proper administration of the liquidation and the interests of parties affected by the disclaimer. The regime relevantly provides:
- (a) that the rights and liabilities of persons other than the company are not affected by a disclaimer *except so far as necessary* in order to release the company and its property from liabilities in respect of the disclaimer property: s 568D(1). The 'rights' affected are not confined to non-proprietary rights;
- 20 (b) that a person aggrieved by the disclaimer may prove as a creditor of the company in the winding up for any loss suffered because of the disclaimer: s 568D(2);
- (c) protection for parties affected by a disclaimer, such as the right to apply to have the disclaimer set aside (ss 568B and 568E), to seek vesting orders (s 568F) or to seek orders in respect of contracts (s 568(9)). Importantly, a disclaimer may only be set aside if the Court is satisfied that the disclaimer would cause, to persons who have, or claim to have, interests in the property, prejudice that is grossly of proportion to the prejudice that setting aside the disclaimer would cause the company's creditors: ss 568B(3); 568E(5).
- 30 72 The Appellant contends that the requirement of necessity in s 568D(1) requires the liquidator to disclaim in a manner which minimises the impact on third parties. This misreads the provision. The requirement of necessity only relates to minimising the impact of a *given* disclaimer. There is nothing in s 568D or the disclaimer provisions generally which regulates the liquidator's choice whether, and what property, to disclaim.<sup>82</sup> The decision can however be challenged on an application to set aside.
- 73 The Appellant points to the legislative history of the disclaimer provisions to support its approach. If the meaning of the unqualified words 'a contract' or 'lease of land' is unambiguous (as the Respondents submit) then reliance on historical considerations and extrinsic materials cannot be used to displace that meaning.<sup>83</sup> In any event, the
- 40 legislative history does not resolve the construction question.
- (a) The 1992 amendments (i) clarified that a 'lease of land' is a 'contract' and (ii) extended disclaimer to *all* contracts, not merely unprofitable contracts. This suggests that a broader, rather than a narrower, range of contracts can be disclaimed.

<sup>79</sup> Appellant's Submissions [37]; see also [38(d)]-[38(e)].

<sup>80</sup> Appellant's Submissions [37(i)].

<sup>81</sup> Appellant's submissions [38(c)].

<sup>82</sup> Cf Appellant's Submissions at [38(j)].

<sup>83</sup> *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27, 46 [47] (Hayne, Heydon, Crennan and Kiefel JJ).

- (b) That the *Bankruptcy Act 1966* (Cth) requires notice to be given to a lessor and any sub-lessee or mortgagee of the disclaimer of a lease<sup>84</sup> does not assist. The Corporations Act imposes a more general requirement, under s 568A, to give notice to any person with an interest in the disclaimer property. This suggests, if anything, that the Corporations Act has a wider reach.
- (c) Furthermore, to the extent that disclaimer provisions have historically focused on the disclaimer by liquidators of lessees, this reflects only that it is a rare case where the liquidator of a landlord has reason to disclaim a lease.<sup>85</sup> It does not demonstrate an intention that the liquidator of a landlord cannot disclaim a lease.

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74 The Appellant's submissions on the commercial impact of adopting the plain meaning of the words are substantially fanciful. First, rarely will a lease be burdensome from the landlord's perspective. Secondly, if unfair, the disclaimer can be set aside. Thirdly, if it is at all relevant that a solvent lessor may assign the reversion to a landlord that later becomes insolvent, the original lessor remains liable on all covenants.

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75 The Appellant places much reliance on *In re Bastable; Ex parte The Trustee*.<sup>86</sup> Prior to his bankruptcy, Bastable was the lessee of a house for a term of 99 years which he had mortgaged by a sub-demise. Five years later he agreed to sell the equity of redemption subject to the mortgage. The purchaser paid a deposit, and Bastable became bankrupt before the purchase price had been fully paid. The trustee purported to disclaim the sale contract. Thereupon the purchaser took proceedings for a declaration that the disclaimer was void and that the lease be transferred to her on payment of the balance of the purchase price.

76 The principal holding by the Court of Appeal, a finding which the Respondents do not dispute, was that the sale contract was not relevantly 'unprofitable' and therefore was not disclaimable property.<sup>87</sup>

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77 The Court of Appeal additionally found, though the finding was not necessary for its decision, that the purchaser had an equitable interest in the land which would remain whatever be the effect of the disclaimer of the sale contract. This holding was based upon the saving provision in s 55(2) of the *Bankruptcy Act 1883* (UK) which provided that a disclaimer 'shall not, except so far as it is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.' Based on this provision, Collins LJ said, 'the effect of a disclaimer of the contract now would be not to relieve the trustee from a burden, [because there was no burden] but to divest and take out of the purchaser the property which is already vested in him.'<sup>88</sup> Likewise, Romer LJ said, 'no disclaimer by the trustee could ... take away the equitable interest in the land which the purchaser had acquired under his contract.'<sup>89</sup>

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78 It should be noted in passing that the view taken by the Court of Appeal regarding the nature of a purchaser's interest under a contract of sale, namely that 'in equity the purchaser is the owner of the property'<sup>90</sup> does not accord with the modern view of the nature of a purchaser's interest.<sup>91</sup>

<sup>84</sup> *Bankruptcy Act 1966* (Cth), sub-s 133(4)(a).

<sup>85</sup> *Re Richmond Commercial Developments* (1990) 5 NZCLC 66,336, 66,340 (Wallace J).

<sup>86</sup> [1901] KB 518.

<sup>87</sup> *Ibid* 525-6 (Collins LJ, with whom the other members of the Court agreed).

<sup>88</sup> [1901] KB 518, 526.

<sup>89</sup> *Ibid* 529.

<sup>90</sup> [1901] KB 518, 523 (Romer LJ), 526 (Collins LJ), 528 (Romer LJ).

<sup>91</sup> *Tanwar Enterprises Pty Ltd v Cauchi* (2003) 217 CLR 315, 332 [52] (Gleeson CJ, McHugh, Gummow, Hayne and Heydon JJ).

- 79 There are a number of reasons why the additional holding in *Bastable* does not govern this case. Indeed, on a close analysis the additional holding may well be wrong.
- 80 First, *Bastable* dealt with a contract for the sale of land, not a lease transaction. Assume it to be correct as the Court of Appeal found, that the disclaimer of the sale contract would not discharge the purchaser's equitable interest in the purchased property (whatever that interest may be). As found by Romer LJ, on disclaimer on the sale contract, the purchaser would be released from its obligation to tender the balance of the purchase price.<sup>92</sup> The purchaser's interest was therefore absolute and the trustee could be directed to convey the legal estate.<sup>93</sup> By way of contrast, for reasons explained above, the position in relation to a lease is different because the company's rights and liabilities under a lease are so connected with the tenant's rights and obligations that, by reason of the s 568D(1), the tenant's rights cannot survive the disclaimer of the lease contract.
- 81 Secondly, the UK Bankruptcy Act only allowed for disclaimer of unprofitable contracts. In *Re Richmond Commercial Developments*, Wallace J held that *Bastable* was distinguishable on that basis, noting that a lease might constitute an unprofitable contract, capable of being disclaimed, under the applicable New Zealand statute.<sup>94</sup>
- 82 It is also important to bear in mind that, unlike the regime in *Bastable*, the current disclaimer regime provides for disclaimers to be set aside by the Court. A disclaimer can be set aside if there is a grossly disproportionate impact on the party adversely affected when compared to the company's creditors as a whole: ss 568B & 568E.
- 83 If it be necessary to argue the point, it is submitted that the second ground for the decision in *Bastable* is wrong. A like argument was considered in *Matter of New York Investors Mutual Group Inc, Bankrupt*.<sup>95</sup>
- 84 Under US bankruptcy law a trustee in bankruptcy is able to abandon burdensome property. The Bankruptcy Act, 11 USCA §110, sub b, relevantly provided at the time<sup>96</sup> that 'the trustee shall assume or reject any executory contract, including unexpired leases of real property ... Any such contract or lease not assumed or rejected ... shall be deemed to be rejected'. The source of this and related provisions is in the early UK cases, especially *Copeland v Stephens*<sup>97</sup> and the UK Bankruptcy Acts.<sup>98</sup>
- 85 In *New York Investors*, the bankrupt's trustee disaffirmed a contract for the sale of real property entered into before bankruptcy. The purchaser contended there was no power in the trustee to disaffirm an executory contract for the sale of real property where the purchaser was the equitable owner of the property. This argument was rejected. The Court held that the relevant section:
- 40 is all-embracing and makes no distinction between contracts for personalty and those for the sale and purchase of realty ... Its underlying principle, and that of the case law which preceded its enactment, is that the trustee in bankruptcy may abandon burdensome property and reject unprofitable executory contracts in order to further the best interests of the estate.<sup>99</sup>

<sup>92</sup> [1901] KB 518, 529.

<sup>93</sup> *Ibid*.

<sup>94</sup> *Re Richmond Commercial Developments* (1990) 5 NZCLC 66,336, 66,341 (Wallace J).

<sup>95</sup> 143 F Supp 51 (1956).

<sup>96</sup> The equivalent current provision is at 11 USCA §365, sub b.

<sup>97</sup> 1 B & A 593.

<sup>98</sup> *Glenny v Landon* 98 U.S. 20, 30-1 (1878); see also 'Abandonment of Assets by a Trustee in Bankruptcy' (1953) 53(3) *Columbia Law Review* 415, 416.

<sup>99</sup> 143 F Supp 51, 54 (1956).

86 The Court went on to say that 'the vendee's equitable title, so long as it remained such, was subject in the event of the vendor's bankruptcy before delivery of the deed to the statutory power of rejection by the trustee.'<sup>100</sup>

87 This argument applies with equal force to s 568 of the Corporations Act.

#### Costs

88 Finally, as to costs, the parties agreed prior to the hearing in the Court of Appeal that the Liquidators would pay the Appellant's costs of the Court of Appeal up to a certain amount. Those costs have been paid.

#### PART VIII:

10 89 The Respondents estimate that they require 1 ¼ hours to present oral argument.

Dated: 5 July 2013

Philip D Crutchfield  
Robert G Craig  
Daniel J Snyder

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<sup>100</sup> Ibid.



**SCHEDULE 2 – UNREGISTERED MANAGED INVESTMENT SCHEMES: CONTRACTUAL  
SCHEMES AND PARTNERSHIP SCHEMES**

**CONTRACTUAL SCHEMES:**

- 90 1983 (No project)
- 91 1984 (No project)
- 92 1985 (No project)
- 93 1986 (No project)
- 94 1987 (No project)
- 10 95 1989 (No project)
- 96 1990 (No project) Interest Only Offer
- 97 1991 (No project)
- 98 Sharp/Reed Plantation Project – 1998 Information Memorandum
- 99 2001 (No project)

**PARTNERSHIP SCHEMES**

- 1 McKenzie & Partners – Forestry Partnership No. 1 (1993)
- 2 Grimsey & Associates Pty Ltd – Forestry Partnership No. 1 (1994)
- 3 Grimsey & Associates Pty Ltd – Forestry Partnership No. 2 (1994)
- 20 4 Grimsey & Associates Pty Ltd – Forestry Partnership No. 3 (1994)
- 5 McKenzie & Partners – Forestry Partnership No. 2 (1994)